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Thomson, and Lovella A. Pongan

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13 MARIAM BLUE, individually, and as
14 Special Administrator of the Estate of
STEPHEN BURRELL; LISA L. CARROLL
15 on behalf of her wards SMB, and SFB,
individually,

16 Plaintiffs,

17 vs.

18 CITY OF LAS VEGAS, a political
subdivision of the State of Nevada;
19 MICHELE FREEMAN, Former Chief of City
of Las Vegas Department of Public Safety, in
20 her official and individual capacities;
ROBERT STRAUBE, Deputy Chief of
21 Detention Services for City of Las Vegas
Department of Public Safety, LIEUTENANT
22 SHARON MEADS, LIEUTENANT CESAR
LANDROVE, LIEUTENANT VENUS
23 THOMPSON, LIEUTENANT DANIELLE
DAVIS, in their official and individual
24 capacities; WELLPATH CARE, F/K/A
CORRECT CARE SOLUTIONS,
25 individually; OFFICER DORADO,
individually; OFFICER D. CHAPARRO,
26 individually; OFFICER M. WASHINGTON,
individually; SGT M. PARKER, individually;
27 SGT. C. SMITH, individually; SGT. WEDIG,
individually; SHAWN MAPLETON,
28 individually; MICHAEL POPOV,

Case No.: 2:21-cv-00372-RFB-DJA

**DEFENDANT LOVELLA A. PONGAN
ANSWER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT**

1 individually; FRANCES BODDIE-SMALL,
2 individually; EBONYMICHELLE D.
3 GARNER, individually; PSYCH RN DEE,
4 individually; REGINA ELIZONDO,
5 individually, and DOES 1-35, inclusive all of
whom are sued in their individual capacities,

Defendants.

6 COMES NOW Defendant LOVELLA A. PONGAN, by and through her counsel of record,
7 S. Brent Vogel, Esq., Erin E. Jordan, Esq., and Shady Sirsy, Esq. of the law firm Lewis Brisbois
8 Bisgaard & Smith, LLP, and Answers Plaintiffs MARIAM BLUE's and LISA L. CARROLL's First
9 Amended Complaint as follows:

10 **INTRODUCTION**

11 1. Answering Paragraphs 1, 2, 3, 4 5, 6, 7, and 8 of Plaintiffs' Complaint, Defendant
12 is without sufficient information or knowledge to admit or deny the allegations contained therein
13 and upon that basis, deny each and every allegation contained therein.

14 2. Answering Paragraphs 9, 10, 11 and 12 of Plaintiffs' Complaint, Defendant denies
15 each and every allegation contained therein.

16 **PARTIES**

17 3. Answering Paragraphs 13, 14, 15, 16, 17, 18, 19, 20, and 21 of Plaintiffs'
18 Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth or falsity
19 of the allegations contained therein and upon that basis, deny each and every allegation contained
20 therein.

21 4. Answering Paragraph 22 of Plaintiffs' Complaint, Defendant denies each and
22 every allegation contained therein.

23 5. Answering Paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,
24 38, 39, 40, 41, 42, and 43 of Plaintiffs' Complaint, Defendant is without sufficient knowledge to the
25 form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny
26 each and every allegation contained therein.

27 6. Answering Paragraph 44 of Plaintiffs' Complaint, Defendant denies each and
28 every allegation contained therein.

7. Answering Paragraph 45 of Plaintiffs' Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

8. Answering Paragraph 46 and 47 of Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

9. Answering Paragraphs 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 and 66 of Plaintiffs' Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

JURISDICTION AND VENUE

10. Answering Paragraphs 67 and 68 of Plaintiffs' Complaint, Defendant avers that Paragraphs 67 and 68 set forth legal propositions for which no answer is required; however, to the extent Paragraphs 67 and 68 includes allegations of material fact, Defendant denies all such allegations.

11. Answering Paragraph 69 of Plaintiffs' Complaint, Defendant avers that Paragraph 69 sets forth legal propositions for which no answer is required. To the extent Paragraph 69 includes allegations of material fact, Defendant denies all such allegations.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

12. Answering Paragraphs 70, 71, 72, 73, 74, 75, 76 and 77 of Plaintiffs' Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

13. Answering Paragraphs 78, 79 and 80 Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

14. Answering Paragraphs 81, 82, 83, 84, 85, 86, 87, and 88 of Plaintiffs' Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

15. Answering Paragraphs 89 and 90 of Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

1 16. Answering Paragraph 91 of Plaintiffs' Complaint, Defendant is without sufficient
2 knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon
3 that basis, deny each and every allegation contained therein.

4 17. Answering Paragraph 92 of Plaintiffs' Complaint, Defendant denies each and
5 every allegation contained therein.

6 18. Answering Paragraphs 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103 and 104 of
7 Plaintiffs' Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth
8 or falsity of the allegations contained therein and upon that basis, deny each and every allegation
9 contained therein.

10 19. Answering Paragraphs 105 and 106 of Plaintiffs' Complaint, Defendant denies
11 each and every allegation contained therein.

12 20. Answering Paragraphs 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118,
13 119, 120, 121, 122, 123, 124, and 125 of Plaintiffs' Complaint, Defendant is without sufficient
14 knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon
15 that basis, deny each and every allegation contained therein.

16 21. Answering Paragraphs 126, 127 and 128 of Plaintiffs' Complaint, Defendant
17 admits each and every allegation contained therein.

18 22. Answering Paragraphs 129, 130, 131, 132, 133, 134, and 135 of Plaintiffs'
19 Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth or falsity
20 of the allegations contained therein and upon that basis, deny each and every allegation contained
21 therein.

22 23. Answering Paragraphs 136 and 137 of Plaintiffs' Complaint, Defendant denies
23 each and every allegation contained therein.

24 24. Answering Paragraphs 138 and 139 of Plaintiffs' Complaint, Defendant is without
25 sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein
26 and upon that basis, deny each and every allegation contained therein.

27 25. Answering Paragraphs 140, 141, 142, and 143 of Plaintiffs' Complaint, Defendant
28 denies each and every allegation contained therein.

26. Answering Paragraphs 144, 145, and 146 of Plaintiffs' Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

27. Answering Paragraph 147 of Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

28. Answering Paragraphs 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, and 158 of Plaintiffs' Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

29. Answering Paragraph 159 of Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

FIRST CLAIM FOR RELIEF

DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS IN VIOLATION OF THE FOURTEENTH AMENDMENT

(42 U.S.C § 1983)

Special Administrator v. Individual Defendants

30. Answering Paragraph 160 of Plaintiffs' Complaint, Defendant hereby repeats, realleges, and incorporates by reference their responses to Paragraphs 1 through 159 as though fully set forth herein.

31. Answering Paragraphs 161 and 162 of Plaintiffs' Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

32. Answering Paragraphs 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, and 173 of Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

SECOND CLAIM FOR RELIEF

DEPRIVATION OF FAMILIAL ASSOCIATION IN VIOLATION OF THE FOURTEENTH AMENDMENT

(42 U.S.C § 1983)

All Plaintiffs v. Individual Defendants

33. Answering Paragraph 174 of Plaintiffs' Complaint, Defendant hereby repeats, realleges, and incorporates by reference their responses to Paragraphs 1 through 173 as though fully

1 set forth herein.

2 34. Answering Paragraphs 175 and 176 of Plaintiffs' Complaint, Defendant is without
3 sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein
4 and upon that basis, deny each and every allegation contained therein.

5 35. Answering Paragraphs 177, 178, 179, 180, 181, and 182 of Plaintiffs' Complaint,
6 Defendant denies each and every allegation contained therein.

7 **THIRD CLAIM FOR RELIEF**

8 **OVER-DETENTION IN VIOLATION OF FOURTEENTH AMENDMENT**
9 **(42 U.S.C § 1983)**

10 ***Special Administrator v. Individual Defendants***

11 36. Answering Paragraph 183 of Plaintiffs' Complaint, Defendant hereby repeats,
12 realleges, and incorporates by reference their responses to Paragraphs 1 through 182 as though fully
13 set forth herein.

14 37. Answering Paragraphs 184 and 185 of Plaintiffs' Complaint, Defendant is without
15 sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein
16 and upon that basis, deny each and every allegation contained therein.

17 38. Answering Paragraphs 186, 187, 188, 189, and 190 of Plaintiffs' Complaint,
18 Defendant denies each and every allegation contained therein.

19 **FOURTH CLAIM FOR RELIEF**

20 **MONELL LIABILITY- FAILURE TO TRAIN**
21 **(42 U.S.C § 1983)**

22 ***Special Administrator v. City of Las Vegas & Wellpath***

23 39. Answering Paragraph 191 of Plaintiffs' Complaint, Defendant hereby repeats,
24 realleges, and incorporates by reference their responses to Paragraphs 1 through 190 as though fully
25 set forth herein.

26 40. Answering Paragraphs 192, 193 (*a. through h.*), 194, 195, 196, 197, and 198 of
27 Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

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FIFTH CLAIM FOR RELIEF

**MONELL LIABILITY- POLICY & CUSTOM
(42 U.S.C § 1983)**

Special Administrator v. City of Las Vegas & Wellpath

41. Answering Paragraph 199 of Plaintiffs' Complaint, Defendant hereby repeats, realleges, and incorporates by reference their responses to Paragraphs 1 through 198 as though fully set forth herein.

42. Answering Paragraphs 200 (*a. through i.*), 201, 202, 203 and 204 of Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

43. Answering Paragraph 205 of Plaintiffs' Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

SIXTH CLAIM FOR RELIEF

**DISABILITY DISCRIMINATION IN VIOLATION OF THE REHABILITATION ACT
OF 1973 and TITLE II OF THE AMERICANS WITH DISABILITIES ACT ("ADA")**

Special Administrator v. City of Las Vegas & Wellpath

44. Answering Paragraph 206 of Plaintiffs' Complaint, Defendant hereby repeats, realleges, and incorporates by reference their responses to Paragraphs 1 through 205 as though fully set forth herein.

45. Answering Paragraphs 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, and 217 of Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

SEVENTH CLAIM FOR RELIEF

**WRONGFUL DEATH IN VIOLATION OF NEVADA STATE LAW *SMB, SFB, and
Mariam Blue v. All Defendants***

46. Answering Paragraph 218 of Plaintiffs' Complaint, Defendant hereby repeats, realleges, and incorporates by reference their responses to Paragraphs 1 through 217 as though fully set forth herein.

47. Answering Paragraphs 219 (*a. through d.*), 220, 221, and 222 (*a. through d.*) of Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

48. Answering Paragraphs 223 and 224 of Plaintiffs' Complaint, Defendant is without

1 sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein
2 and upon that basis, deny each and every allegation contained therein.

3 **EIGHTH CLAIM FOR RELIEF**

4 **WRONGFUL DEATH IN VIOLATION OF NEVADA STATE LAW**
5 ***Special Administrator v. All Defendants***

6 49. Answering Paragraph 225 of Plaintiffs' Complaint, Defendant hereby repeats,
7 realleges, and incorporates by reference their responses to Paragraphs 1 through 224 as though fully
8 set forth herein.

9 50. Answering Paragraphs 226 (*a. through d.*), 227, 228 (*a. through d.*), and 229 of
10 Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

11 51. Answering Paragraphs 230 and 231 of Plaintiffs' Complaint, Defendant is without
12 sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein
13 and upon that basis, deny each and every allegation contained therein.

14 **NINTH CLAIM FOR RELIEF**

15 **NEGLECT OF A VULNERABLE PERSON IN VIOLATION OF NEVADA STATE LAW**
16 ***Special Administrator v. All Defendants***

17 52. Answering Paragraph 232 of Plaintiffs' Complaint, Defendant hereby repeats,
18 realleges, and incorporates by reference their responses to Paragraphs 1 through 231 as though fully
19 set forth herein.

20 53. Answering Paragraphs 233, 234, 235, 236, 237, 238, and 239 of Plaintiffs'
21 Complaint, Defendant denies each and every allegation contained therein.

22 54. Answering Paragraphs 240 and 241 of Plaintiffs' Complaint, Defendant is without
23 sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein
24 and upon that basis, deny each and every allegation contained therein.

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TENTH CLAIM FOR RELIEF

MEDICAL MALPRACTICE IN VIOLATION OF NEVADA STATE LAW
All Plaintiffs v. Medical Defendants

55. Answering Paragraph 242 of Plaintiffs' Complaint, Defendant hereby repeats, realleges, and incorporates by reference their responses to Paragraphs 1 through 241 as though fully set forth herein.

56. Answering Paragraphs 243, 244, 245, 246, and 247 of Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

57. Answering Paragraphs 248 and 249 of Plaintiffs' Complaint, Defendant is without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

AFFIRMATIVE DEFENSES

58. Plaintiffs' First Amended Complaint on file herein fails to state a claim against Defendant upon which relief can be granted.

59. Plaintiffs' First Amended Complaint on file herein is barred by the applicable statute of limitations.

60. The injuries, if any, allegedly suffered by Plaintiff as set forth in the Complaint were caused in whole or in part by the negligence of a third party or third parties over which Defendant had no control.

61. The damages, if any, alleged by Plaintiff are not the result of any acts of omission, commission, or negligence, but were the result of a known risk(s), which was consented to by Plaintiff.

62. Pursuant to NRS 41A.110, Defendant is entitled to a conclusive presumption of informed consent.

63. The damages, if any, incurred by Plaintiff are not attributable to any act, conduct, or omission on the part of the Defendant. Defendant denies that it was negligent or otherwise culpable in any matter or in any degree with respect to the matters set forth in Plaintiff's Complaint.

64. That it has been necessary for Defendant to employ the services of an attorney to

1 defend this action and a reasonable sum should be allowed Defendant for attorneys' fees, together
2 with costs of suit incurred herein.

3 65. Pursuant NRS 41A.035 Plaintiff's non-economic damages, if any, may not exceed
4 \$350,000.

5 66. Defendant is not jointly liable with any other entities that may or may not be
6 named in this action and will only be severally liable for that portion of Plaintiff's claims that
7 represent the percentage of negligence attributable to Defendant, if any.

8 67. Plaintiff's damages, if any, were not proximately caused by Defendant.

9 68. Plaintiff's injuries and damages, if any, are the result of forces of nature over
10 which Defendant had no control or responsibility.

11 69. Plaintiff is barred from asserting any claims against Defendant because the alleged
12 damages were the result of one or more unforeseeable intervening and superseding causes.

13 70. Plaintiff failed to mitigate damages, if any.

14 71. Plaintiff failed to allege facts in support of any award of pre-judgment interest.

15 72. The incident alleged in the Amended Complaint, and the resulting damages, if
16 any, to Plaintiff, was proximately caused or contributed to by the Plaintiff's own negligence, and
17 such negligence was greater than the negligence, if any, of Defendant.

18 73. Pursuant to FRCP 11, as amended, all applicable Affirmative Defenses may not
19 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon
20 the filing of Defendant's Answer and, therefore, Defendant reserves the right to amend their Answer
21 to allege additional Affirmative Defenses if subsequent investigation warrants.

22 74. Plaintiffs failed to substantively comply with NRS 41A.071.

23 75. At all times mentioned herein, Defendant acted reasonably and in good faith with
24 regard to the acts and transactions which are the subject of this lawsuit.

25 76. To the extent Plaintiffs has been reimbursed from any source for any special
26 damages claimed to have been sustained as a result of the incidents alleged in Plaintiff's Complaint,
27 Defendant may elect to offer those amounts into evidence and, if this Defendant so elects, Plaintiffs'
28 special damages shall be reduced by those amounts pursuant to NRS 42.021.

1 77. Defendant hereby incorporates by reference those affirmative defenses
 2 enumerated in FRCP 8 as if fully set forth herein. In the event further investigation or discovery
 3 reveals the applicability of such defenses, Defendant reserves the right to seek leave of the court to
 4 amend this Answer to assert the same. Such defenses are incorporated herein by reference for the
 5 purpose of not waiving the same.

6 78. Defendant avails themselves of all affirmative defenses and limitations of action
 7 as set out in NRS 41.085, 41A.035, 41A.045, 41A.061, 41A.071, 41A.097, 41A.100, 42.005,
 8 42.021, 41.141, and all applicable subparts.

9 79. NRS Chapters 41 and 41A limit damages that may be collectable against this
 10 Answering Defendant.

11 WHEREFORE, Defendant prays for judgment against Plaintiffs as follows:

- 12 1. That Plaintiffs take nothing by virtue of their First Amended Complaint;
- 13 2. That Plaintiffs be held liable in contribution and or common law indemnity
- 14 and contribution, and for such other and further relief to which Defendant is justly
- 15 entitled;

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3. That Defendant recover costs of suit incurred herein;
4. That Defendant recover attorneys' fees and costs; and
5. For such other and further relief as the Court may deem just, equitable, and proper.

DATED this 24th day of February, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Brent S. Vogel

S. BRENT VOGEL

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2022, I electronically filed the foregoing **DEFENDANT LOVELLA A. PONGAN ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** with the Clerk of Court for the United States District Court, and served the registered user participants in the case, by using the Court's CM/ECF system.

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/s/Tiffany Dube
An employee of
Lewis Brisbois Bisgaard & Smith LLP